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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/651,988	08/30/2000	Michio Kusayanagi	FUJ 17.433	2401
26304	7590	09/12/2005	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP			WONG, BLANCHE	
575 MADISON AVENUE			ART UNIT	
NEW YORK, NY 10022-2585			PAPER NUMBER	

2667

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/651,988

Applicant(s)

KUSAYANAGI ET AL.

Examiner

Blanche Wong

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 1 and 4-14 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed March 3, 2005 have been fully considered but they are not persuasive.

With regard to drawings, the parts of the Specification pointed to by the Applicant does not provide for a distribution means (cl. 2). According to that Applicant, cl. 2 is being shown in the drawings in Fig. 3, and Applicant points to Specification, p. 9, 2<sup>nd</sup> para. Remark, p. 7. However, p.9, 2<sup>nd</sup> para., refers to Fig. 2, not Fig. 3. Additionally, the description of Fig. 3 on p.9, 3<sup>rd</sup> para., does not disclose a distribution means. There is no distribution in the description of Fig. 3.

With regard to cl. 1, Applicant contends that the claimed invention is different from Fig. 26 and 27 and Kim in setting a PVC between a user-side device and a handler in advance. Remark, p.9. The claim language of cl. 1 does not reflect when a PVC is set between a user-side device and a handler. Applicant also contends that the claimed invention is different from Fig. 26 and 27 and Kim in forming a path between the PVC and the specified connection destination by a connection request from the user-side device and that Kim only describes a user terminal using an SVC to request to a control server for a PVC. Remark, p. 9. A user terminal using an SVC to request for a PVC, whether the request is routed via a control server, is still a connection request originated by a user-side device.

With regard to cl. 14, Applicant contends that cl. 14 depends from cl. 1. Remark, p. 9. Therefore, the 35 U.S.C. 103 rejection for cl. 14 holds because argument for cl. 1 is not persuasive.

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2. Applicant's arguments, see p.9, filed March 3, 2005, with respect to the rejection(s) of claim(s) 1 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of admitted prior arts and .

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the distribution means (cl. 2) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

4. The drawings are objected to under 37 CFR 1.83(b) because they are incomplete. 37 CFR 1.83(b) reads as follows:

When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, and also in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.

### ***Claim Objections***

5. Claims 1,2,4 are objected to because of the following informalities:

With regard to cl. 1, ln. 10, Examiner suggests replacing "network side device" with – network-side device – in consistent with the "network-side device" in ln. 1.

With regard to cl. 2, ln. 4, Examiner suggests replacing "the permanent virtual connection path connected with the user-side device" with – said permanent virtual connection path connected between said network-side device and the user-side device – in consistent with cl. 1.

With regard to cl. 4, ln. 5, Examiners suggests replacing "said path connection means further including ..." with – said path connection means further includes ... --.

With regard to cl. 5, ln. 2, Examiner suggests replacing "the permanent virtual connection path with the user-side device" with – said permanent virtual connection path connected between said network-side device and the user-side device --.

With regard to cl. 5, ln. 3-4, Examiner suggests dropping the comma before "and transfers ..." so that cl. 5 reads "... said path connection means recognizes ... and transfers ... , and recognizes ... and transfers ..."

With regard to cl. 10 and 11, ln. 2-3, Examiner suggests replacing "the permanent virtual connection path with the user-side device" with – said permanent virtual connection path connected between said network-side device and the user-side device --.

With regard to cl. 12, ln. 3-4, Examiner suggests replacing "the permanent virtual connection path with the user-side device" with – said permanent virtual connection path connected between said network-side device and the user-side device --.

With regard to cl. 14, ln. 4-5, Examiner suggests replacing "the permanent virtual connection path of the user-side device" with – said permanent virtual connection path connected between said network-side device and the user-side device --.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. **Claims 4,5,6,10-14** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to cl. 4, ln. 3-4, it is unclear whether a label is assigned to a layer 2 link or assigned to a layer 2 packet.

With regard to cl. 4, ln. 5-6, it is unclear what is label multiplex layer 2 links.

With regard to cl. 5, ln. 2-3, it is unclear how the labels of layer 2 packets are the same labels that are assigned for each layer 2 link.

With regard to cl. 6, ln. 4-6, it is unclear whether "is sent back from the side of the device that received said labeled layer 2 packet, as a link of the pair of said layer 2 link newly assigned a label" refers to the link of the labeled layer 2 packet that is assigned the same label number or refers to said path connection means.

With regard to cl. 10, ln. 3-4, it is unclear whether "to which are assigned labels according to the quality-of-service class of each layer 2 link" refers to the labels of layer 2 packets or refers to said path connection means.

With regard to cl. 11, ln. 3-4, it is unclear whether "to which are assigned labels according to the connection destination of each layer 2 link" refers to the labels of layer 2 packets or refers to said path connection means.

With regard to cl. 13, ln. 6-7, it is unclear whether "a path to be connected between the user-side device and the specified connection destination" is the same path as "a path between the user-side device and the specified connection destination" in cl. 1, ln. 12.

8. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the labels of layer 2 packets that arrive from the permanent virtual connection path with the user-side device" in ln. 2.

Claim 5 recites the limitation "the labels of labeled layer 2 packets that arrive from the path with the specified connection destination" in ln. 5-6.

Claim 6 recites the limitation "the pair of said layer 2 link newly assigned a label" in ln. 5-6.

Claim 12 recites the limitation "the labels of layer 2 packets assigned according to the distribution type of service in the IP packet within layer 2 link packets that arrive from the permanent virtual connection path with the user-side device" in ln. 2-4.

Claim 13 recites the limitation "the request connection destination name from layer 2 link information emitted from the user-side device at the time of a layer 2 link connection request" in ln. 2-4.

Claim 14 recites the limitation "the path connection means that connections the permanent virtual connection path of the user-side device to said connection destination *after one connection destination path is specified*" in ln. 3-5 [with emphasis].

Claim 14 recites the limitation "said connection destination" in ln. 5.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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1. **Claims 1 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior arts in Fig. 26 and 27, and in view of Kim (U.S. Pat No. 6,519,256).

Regarding cl. 1, Fig. 26 discloses a network-side device that is connected with a user-side device by a permanent virtual connection path, where in said user-side device is made to connect to one among multiple specified connection destinations via one of a permanent virtual connection path. Fig. 27 discloses a path specification means (PPP Trailer, PPP Header) that specifies one path of a connection request destination from layer 2 link information that is emitted from the user-side device at the time of a layer 2 link connection request; and a path connection means (CPCS-PDU Trailer, CPCS-PDU Header) that causes said permanent virtual connection path connected with the user-side device to connect to one path of the connection request destination and form a path between the user-side device and the specified connection destination. However, Fig. 26 and 27 does not disclose a layer 2 link handler nor the embodiment of Fig. 27 within a network-side device, and Fig. 26 fails to disclose multiple specified connection destinations via one of a switched virtual connection path.

In an analogous art, Kim uses SVC in an ATM network and discloses a layer 2 link handler 213,214 (second layer) in Fig. 2.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in an ATM system a layer 2 link handler, as taught by Kim, to provide a method of obtaining private line service only through an ATM network. Col. 2, ln. 22-24.



Regarding cl. 14, the combination of prior arts and Kim discloses a layer 2 link handler as described in claim 1. However, the combination failed to disclose software control by a processor and a switching means by means of hardware.

Kim further discloses processing that specifies one path of the connection request destination from layer 2 link information in said path specification means is done under software (software is running on the server and workstation) control by a processor (there is processor inside server and workstation), and the path connection means that connects the permanent virtual connection path of the user-side device to said connection destination after on connection destination path is specified, is constituted by a switching means by means of hardware (terminal, server, workstation).

Fig. 3.

2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include software and hardware, as taught by Kim, to provide a communication system comprising PVC control server for automatically controlling the PVC in an ATM network. Col. 2, ln. 25-28.

### ***Allowable Subject Matter***

10. Claims 2,3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 7-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Conclusion**

12. This is a continuation of applicant's earlier Application No. 09/651,988. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blanche Wong whose telephone number is 571-272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BW

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September 5, 2005



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9/5/05